Supreme Court, U.S.
FILED

02 1557 MAR 4 2003

No._____

IN THE

Supreme Court of the United States

Douglas E. Roaden,
Petitioner,

v.

Jon Dermott, Dean Dankelson, Norm Rouse,
George Thomas, Nick Marshall,
Blake Wolf, W.J. Pierce
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Douglas E. Roaden
Pro Se Petitioner
2324½ S. Moffet
Joplin, Missouri 64804
ph#417-206-8522

24 pp

QUESTIONS PRESENTED

1. Whether judicial immunity is to be maintained under a loss of subject matter under jurisdiction.

2. Whether quasi-judicial immunity is afforded a prosecutor when acting in contravention of the law.

3. Who is responsible for full disclosure of charges pending under prisoner detainer conditions.

4. Is federal violation warranted for failure of due notice of all pending charges.

5. Is it within the federal court's jurisdiction to issue an injunctive order to remove information derived from violations of a citizen's federal rights which constitute a continuation of those violations.

TABLE OF CONTENTS

Questions Presented i

Opinions 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Reasons for Granting the Writ 2

Statement of the Case 2

Conclusion 5

Appendix 7

PETITION FOR WRIT OF CERTIORARI

Comes now Douglas E. Roaden, Pro se, and respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS

The opinion of the Eighth Circuit as well as that of the Federal District Court for the Western District of Missouri Southwest Division are unpublished; however, petitioner has attached copies of those that were issued to him. (Items listed in appendix.)

JURISDICTION

The judgment and opinion of the Court of Appeals concurring with the District Court and dismissing the case as legally frivolous in favor of the respondents was entered November 8, 2002. A timely Petition for Panel Rehearing was filed in the Eighth Circuit. On December 5, 2002, the Eighth Circuit denied the petition. The jurisdiction of this Court is timely invoked by petitioner pursuant to 28 U.S.C. §1254(1). Petitioner invoked federal question jurisdiction in the District Court to review numerous constitutional deprivations, including a request for injunctive relief under Rule 65 of the Federal Rules of Civil Procedure, all of the aforementioned brought pursuant to 42 U.S.C. §1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 4, which provides in part that "...no warrants shall issue, but upon probable cause..."

U.S. Const. Amend. 5, which provides in part "...nor be deprived of life, liberty, or property, without due process of law..."

U.S. Const. Amend. 6, which provides in part that "...In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial..."

U.S. Const. Amend. 14, which provides in part "...nor deny to any person within its jurisdiction the equal protection of the laws..."

RSMo 217.450-217.490.

REASONS FOR GRANTING THE WRIT

1. Lower courts must be held accountable for the reckless disregard of indigent inmates' federal rights.
2. Prosecutors must not be allowed to act in contravention of established law.
3. The issues presented are of exceptional nature in that no case precedence or statutory direction exists pertaining to disclosure of pending charges under existing prisoner detainer laws, *RSMO. 217.450-217.490. combined state & federal statutes.*
4. On this record, the Eighth Circuit's decision departs from this Court's decisions on Judicial Immunity in *Bradley v. Fisher, 80 U.S. 13(Wall) 335, 20 L Ed. 646, and Mirales v. Waco, 112 S.Ct. 286, 502 U.S. 9, 116 L Ed. 2d9.*
5. On this record, the Eighth Circuit's decision departs from this court's decision on prosecutiorial immunity in *Imbler v. Pachtman, 96 S.Ct. 984, 424 U.S. 409, L.Ed. 2d128.*

STATEMENT OF THE CASE

Due to the complexity of this case and the fact that the Eighth Circuit Court of Appeals has neglected to issue an opinion, the petitioner will directly address only those points specifically chosen by District Judge Scott O. Wright in his judgment entered on May 28, 2002. (See item 1 listed in appendix.)

JUDICIAL IMMUNITY

This is a case that warrants the Court's attention and consideration to determine whether lower courts may be allowed to recklessly disregard the rights of those who are not in a position to properly defend themselves. It is understood that judges are generally immune from civil liability and that state courts have original jurisdiction over criminal matters. Judge Scott O. Wright is merely

engaging in double talk and attempting misdirection here, under a loss of subject matter jurisdiction a nullity of these principals occurs. This Court has previously determined that judicial officers acting under a lack of subject matter jurisdiction are to be considered as acting with usurped authority, *"Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible."* ***Bradley v. Fisher, 80 U.S. 13 (Wall) 335, 20 L Ed. 646.*** On the record before this Court Judge Jon Dermott was given ample and insistent notice of a loss of subject-matter jurisdiction. Judge Wright also indicates that the acts complained of being judicial in nature are thereby under the umbrella of immunity. This Court has determined that a *"...judge is not immune for his actions, though judicial in nature, taken in complete absence of all jurisdiction."* ***Mirales v. Waco, 112 S.Ct. 286, 288, 502 U.S. 9, 116 L Ed. 2d. 9.***

QUASI-JUDICIAL IMMUNITY

Being licensed members of the Bar of the State of Missouri as well as officers of the court, it should have been reasonable to expect the prosecutors involved in this case to have been able to determine the petitioner's legal position and to understand that their continued action against petitioner was in contravention of legislatively mandated law, *"...we hold only in initiating a prosecution and in presenting the state's case, the prosecutor is immune from a suit for damages under §1983."* ***Imbler v. Pachtman, 96 S.Ct. 984, 995, 424 U.S. 409, L Ed. 2d 128.*** Each and every principal of law as well as all relevant case law pertaining to these matters was issued to the prosecutor's office in the same form as that which was issued to the court: *"...the actions of a prosecutor are not absolutely immune merely because they are performed by a prosecutor."* ***Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993).*** Plaintiff does not know how this court views an unlawful continuation of process, but the Missouri State Supreme Court has deemed what petitioner refers to as the act of

"malicious continuation" to have the effect of removing the probable cause defense and therefore be sufficient grounds in this aspect for a claim of malicious prosecution to be substantiated, ***Stafford v. Muster, 582 S.W. 2d 670,676 (Mo banc 1979).*** There is much more argument dealing with this issue in plaintiff's original §1983 action, as well as an analogy drawn from an historic ruling made by this Court concerning time related changes in legal processes that plaintiff is of the opinion has application here. ***See §1983 pg. 18, Ex parte Watkins, 32 U.S. 568 (U.S. Dist. of Col. 1833).***

FAILURE OF NOTICE

As can be ascertained from petitioner's original §1983 action, (***See §1983 pg. 16)*** there was no direct accusation made against the sheriff as was alluded to by Judge Scott O. Wright, petitioner naively requested of the Federal District Court assistance in determining a possible notice violation and where responsibility for notice lies. Under current prisoner detainer laws ***RSMo. 217.450-217.490,*** there is no direction for complete disclosure of pending charges arising from the *"same transaction"* ***§217.490 Article V. sec. 4,*** nor is there indication of what legal representative is to be responsible for issuing due notice of pending charges upon proper request. Inapplicable interpretations of certain principals are allowing law enforcement agencies and lower courts to develop inappropriate loopholes to benefit the state's case and remove indigent defendents from the protection of the law, these loopholes, however, so grossly violate the spirit of the law they were obvious even to a layman.

INJUNCTIVE RELIEF

Once again here, Judge Scott O. Wright has side-stepped a critical portion of petitioner's complaint, it is understood that federal jurisdiction does not allow enjoining a state court to amend any previous order. However, it is within the federal court's jurisdiction to direct the appropriate authorities within the Department of Corrections to expunge information derived from heinous violations of

petitioner's federal rights which constitute a continuing violation of said rights, the issue of whether or not this information should ever have existed in the first place has been resolved and the federal district court is being remiss in its duties by allowing this information to remain extant, the state court in this matter has also neglected to take appropriate action on petitioner's behalf. This was the third avenue by which petitioner has attempted to have this information removed.

PENDANT STATE TORT CLAIMS

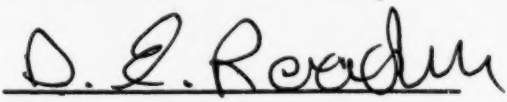
As for the state tort claims involved in this case, if this Court deems it be appropriate, petitioner still has until August of 2003 to file in state court, but actually requires interpretation and application of some portions of his §1983 civil action in order to do so properly. The whole of these matters needs to be viewed in their complete context by this authoritative body, due to the nature of the situation from whence these tort claims derive any portion of this matter filed in a lower court would likely be presented to this Court at some later date as a matter of course and would only serve to confuse in the interim, this was the reasoning for requesting federal supplemental jurisdiction invocation to view these claims.

CONCLUSION

The Federal District Court for the Western District of Missouri Southwest Division and thereby in its concurring opinion the Eighth Circuit Court of Appeals in this matter has based its conclusion of legal frivolity on the assumption that judges and prosecutors are immune from civil action and thereby have dismissed the extensive number of violations incurred by the petitioner as being legally frivolous. There is no basis of law to support this decision. As the petitioner in this matter is not a schooled and licensed attorney and has experienced an inability to obtain counsel to assist in the preparation and presentation of this petition, he is begging this Court's understanding and requesting that the complete record in this matter be allowed to speak here on his behalf. All

pertinent details and information gleaned and compiled over a 2½ year period are included in the original 42 U.S.C.A. §1983 civil action to the best of petitioner's ability. For the foregoing reasons, a writ of certiorari should issue to review the judgment of the Eighth Circuit Court of Appeals in this matter.

Respectfully submitted



Douglas E. Roaden
2324½ S. Moffet
Joplin, MO 64804
Ph# 417-206-8522
Pro se Petitioner

APPENDIX

1. Decision of the Court, United States District Court Western District of Missouri Southwestern Division.

2. Decision of Appeal, United States Court of Appeals for the Eighth Circuit.

3. Petition for Panel Rehearing, United States Court of Appeals for the Eighth Circuit.

4. Denial of Petition for Panel Rehearing, United States Court of Appeals for the Eighth Circuit.

This page intentionally left blank.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

JUDGMENT IN
A CIVIL CASE

DOUGLAS E. ROADEN,

Plaintiff

V.

Case No.
02-5058-CV-SOW-P

JON DERMOTT,

Defendants

☐ **JURY VERDICT.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

■ **DECISION OF THE COURT.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: this case is summarily dismissed with prejudice as legally frivolous. (SOW)(dw)

Entered on: May 28, 2002

P.L. BRUNE
CLERK OF COURT

/s/ D.M. Weinzerl
D.M. WEINZERL
(By) Deputy Clerk

This page intentionally left blank.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

DOUGLAS E. ROADEN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 02-5058-CV-SW-SOW-P
	)	
JON DERMOTT, et al.,	)	
	)	
Defendants.	)	

ORDER GRANTING PLAINTIFF LEAVE TO PROCEED IN FORMA PAUPERIS, AND DISMISSING CASE AS FRIVOLOUS

This 42 U.S.C. §1983 civil rights complaint was filed pro se by a former Missouri inmate, who currently resides in Joplin, Missouri. Plaintiff seeks leave to proceed in forma pauperis, and has filed a non-prisoner affidavit of poverty in support of his request. Having reviewed plaintiff's financial information, his request to proceed in forma pauperis will be granted. However, pursuant to 28 U.S.C. §1915 (e)(2), the Court is required to dismiss the case if satisfied that the action is frivolous, or malicious. See also Kane v. Lancaster County Dept. of Corrections, 960 F.Supp. 219, (D. Neb. 1997).

The defendants named in plaintiff's complaint include Jasper County Circuit Judge Jon Dermott, Jasper County Prosecutor Dean Dankelson, Assistant Prosecutors Norm Rouse, George Thomas, Nick Marshall, and Blake Wolf, and Jasper County Sheriff W.J. Pierce.

As the Court understands plaintiff's somewhat rambling, 32 page narrative, he believes his constitutional rights were violated because Judge Dermott failed to dismiss a class D felony charge of driving while intoxicated (Jasper County Case No. CR499-487FX) based upon a violation of the Uniform Mandatory Disposition of Detainers Law (the

"UMDDL"), and because the defendant prosecutors continued to pursue the matter until plaintiff finally entered a plea of guilty to that charge, which was later vacated in a Mo. Sup. Ct. Rule 24.035 proceeding. Plaintiff also includes what appear to be pendant state tort claims for "false imprisonment," "malicious prosecution," "abuse of process," and "negligent infliction of emotional distress," against the named defendants. He contends that Sheriff Pierce kept a detainer lodged against him under the defective criminal charge, as instructed by the prosecutor's office, with the result being that plaintiff remained in prison longer than he otherwise would have. Further, he says his prison "face sheet" still reflects the conviction, even though it was vacated in the Rule 24.035 proceeding. Plaintiff seeks monetary damages, and injunctive relief in the form of an Order directing the Jasper County Circuit Court to enter an amended order in his Rule 24.035 case, which includes expungement of Case No. CR499-487FX from his prison records.

INJUNCTIVE RELIEF

As a preliminary matter, it is not within this Court's jurisdiction to direct the Circuit Court of Jasper County to amend its Order in plaintiff's Rule 24.035 case. If plaintiff seeks an amendment of that Order, he should petition the state court directly and, if it refuses, he should file appropriate actions in the state appellate courts, with final recourse to the United States Supreme Court. Any interference in the state case by this Court would violate the Rooker-Feldman doctrine.[1]

JUDGE DERMOTT

It is well established that judges are generally immune from civil liability for damages. Pierson v. Ray, 386 U.S. 547 (1967); Bradley v. Fisher, 13 Wall. 335 (1872). "A judge is absolutely immune from liability if (1) the judge has subject matter jurisdiction, and (2) the acts complained of were judicial acts." Smith v. Bacon, 699 F.2d 434, 436 (8th

[1]See Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983).

Cir. 1983) (citing White v. Bloom, 621 F.2d 276, 279 (8th Cir. 1980), cert. denied, 449 U.S. 1089 (1981)). See also Birch v. Mazander, 678 F.2d 754 (8th Cir. 1982). In Missouri, the state circuit courts of each county have "original jurisdiction over all cases and matters, civil and criminal," pursuant to Article V, §14(1) of the Missouri Constitution. Additionally, "[a]n act is a judicial act if it is one normally performed by a judge and if the complaining party is dealing with the judge in his judicial capacity." Birch v. Mazander, 678 F.2d at 756 [citing Stump v. Sparkman, 435 U.S. 349, 362 (1978)]. Consequently, Judge Dermott enjoys absolute immunity from plaintiff's complaint for damages.

PROSECUTORS DANKELSON, ROUSE, THOMAS, MARSHALL & WOLF

Likewise, a prosecuting attorney is absolutely immune from a suit for damages under 42 U.S.C. §1983 for alleged civil rights violations committed in "initiating a prosecution and in presenting the state's case." Imbler v. Pachtman, 424 U.S. 409, 424-27 (1976); White v. Bloom, 621 F.2d 276 (8th Cir.), cert. Denied, 449 U.S. 1986 (1980). Consequently, Prosecutor Dankelson, and Assistant Prosecutors Rouse, Thomas, Marshall, and Wolf, also enjoy absolute immunity from plaintiff's complaint for damages.

SHERIFF PIERCE

From the face of the complaint, it is obvious that defendant Pierce's only involvement in the matters about which plaintiff complains was his filing of a detainer with the Missouri Department of Corrections. Plaintiff complains that the detainer was illegal because the underlying charge in Jasper County Case No. CR499-487FX was illegal once he raised his UMDDL defense. However, Sheriff Pierce is not a judge and has no power to determine whether plaintiff's argument was or was not valid. So long as a facially valid charge remained pending against plaintiff (and a charge to which plaintiff eventually pleaded guilty, at that), the sheriff was obliged to perform his duty, which includes the lodging of a detainer with the Department of Corrections until such time as the charge had been resolved.

Such action violates no recognized constitutional rights, notwithstanding the adverse consequences which the detainer may have had on plaintiff while in prison.

PENDANT STATE CLAIMS

To the extent that plaintiff may be attempting to assert pendant state-law tort claims, the Court declines to entertain such claims, and they will be dismissed without prejudice to refiling in state court.

Accordingly, it is **ORDERED** that:

(1) plaintiff is granted provisional leave to proceed in forma pauperis pursuat to 28 U.S.C. §1915; and

(2) this case is summarily dismissed, with prejudice, as legally frivolous.

/s/ Scott O. Wright
SCOTT O. WRIGHT
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri,

Dated: May 28, 2002

United States Court of Appeals
For The Eighth Court

No. 02-3055

DOUGLAS E. ROADEN, Appellant, vs. Jon Dermott, Dean Dankelson, Norm Rouse, George Thomas, Nick Marshall, Blake Wolf, W.J. Pierce, Appellees.	*	Appeal from the United States District Court for the Western District of Missouri [UNPUBLISHED]

Submitted: October 4, 2002
Filed: November 8, 2002

Before WOLLMAN, MORRIS SHEPPARD ARNOLD, and MELLOY, Circuit Judges.

PER CURIAM.

Douglas Roaden appeals the district court's[1] order, dismissing his pro se complaint as frivolous under 28 U.S.C. §1915(e)(2). After careful review of the complaint, we conclude that the district court did not err in dismissing it as frivolous.

Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

[1]The Honorable Scott O. Wright, United States District Judge for the Western District of Missouri.

This page intentionally left blank.

No. 02-3055

United States Court of Appeals
For The Eighth Circuit

42 U.S.C. S1983

Douglas E. Roaden, Appellant, v. Jon Dermott, Dean Dankelson, Norm Rouse, George Thomas, Nick Marshall, Blake Wolf, W.J. Pierce, Appellees.	)	PETITION FOR PANEL REHEARING

NOVEMBER 18th, 2002

Comes now appellant Douglas E. Roaden, and requests of this Court a panel rehearing under provision of FRAP 40. Appellant states as follows.

According to the direction of rule 40(a)(2), this *petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition.* As there have been no points of fact or determinations for application of the law pertaining to these matters issued to the appellant by the 8th Circuit Court of Appeals in its concurring judgment, the appellant must assume that Judge Scott O. Wright's incomplete, non-technical and inapplicable opinions concerning this matter are also those of the 8th Circuit, therefore this petition will be incomplete with regard to all but two points of law that must be dealt with before continuation, **legal frivolousness** and **absolute immunity**. *"A complaint is frivolous within meaning of statute governing in forma pauperis proceedings* (since appellant's action was initially filed and dismissed under in forma pauperis conditions appellant is confronting this issue from that perspective) *if it lacks an arguable basis in*

law or fact; it lacks an arguable basis in law if the claim is based on an indisputably meritless legal theory. ***Martinez v. Turner, C.A. 8 (Mo.) 1992, 997 F.2d 421.***

Appellant will attempt to lend a meritorious light to his position concerning absolute immunity, whether it be judicial or quasi judicial under a loss of subject matter jurisdiction it in effect becomes a nullity. Absolute immunity is a misnomer, a judge lacks immunity when he acts *in "clear absence of all jurisdiction over the subject matter,"* ***Bradley v. Fisher, 80 U.S. (13 Wall) Id. 351.*** *"Judicial immunity is overcome in only two sets of circumstances: judge is not immune from liability for non-judicial actions, ... and judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction.* ***Mirales v. Waco, 112 S.Ct. 286, 288, 502 U.S. 9, 116 L.Ed. 2d 9.*** As a matter of record jurisdiction of the subject matter was removed from Judge Jon Dermott in Jasper Co. case no. CR 499-487FX by operation of the law on the date of January 31, 2000. As to the quasi judicial immunity afforded prosecutors, *"we hold only in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a suit for damages under S1983,"* ***Imbler v. Pachtman, 96 S.Ct. 984, 995, 424 U.S. 409, L.Ed. 2d 128.*** An unsupported ruling of legal frivolity based on absolute immunity issued by the District Court Judge is neither warranted by law, nor sufficient in scope to address the complexities of this action, until these main issues are given a proper and lawful determination the violations incurred by the appellant do not give rise to discussion at this point, the appellant would appreciate the opportunity to be heard on any and all of the issues involved in this action but requires specific opinions based on legal determination in order to proceed in those areas.

Wherefore, appellant requests this Court lend consideration to his plea and grant a re-hearing of this action, so as to make known the particular points of law and fact in support of its position.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
Thomas F. Eagleton Court House
Room 24.329
111 S. 10th Street
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

Voice (314) 244-2400
Fax (314) 244-2780
www.ca8.uscourts.gov

December 5, 2002

Mr. Douglas E. Roaden
2324½ S. Moffet
Joplin, MO 64804

Re: 02-3055 Douglas E. Roaden vs. Jon Dermott

Dear Sir:

Enclosed is a copy of an order entered today in the above case at the direction of the court.

(5009-010199)

Sincerely
/s/ Michael E. Gans
Michael E. Gans
Clerk of Court

paw

Enclosure(s)

cc: Honorable Scott O. Wright, Senior Judge
Patricia L. Brune, Clerk

District Court/Agency Case Number(s): 3-02-5058-CV-SOW

This page intentionally left blank.

United States Court of Appeals
For The Eighth Circuit

No. 02-3055

Douglas E. Roaden,	*	
	*	
Appellant,	*	Appeal from the United States District Court for the Western District of Missouri
	*	
vs.	*	
	*	
Jon Dermott, et. al.,	*	
	*	
Appellees.	*	

The petition for rehearing by the panel filed by appellant has been considered by the court and is denied. (5193-010199)

December 5, 2002

Ordered Entered at the Direction of the Court:
/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit